

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

NORFOLK SOUTHERN RAILWAY
COMPANY
650 W. Peachtree St. NW
Atlanta, GA 30308,

Plaintiff,

CASE NO. 2:24-cv-1104

v.

JUDGE

BRANDT ROAD RAIL CORPORATION
302 Mill Street,
Regina, Saskatchewan S4P3E1 Canada,

COMPLAINT

JURY DEMAND ENDORSED HEREIN

and

BRANDT ROAD RAIL INC.
c/o Statutory Agent
Corporation Service Company
1160 Dublin Road, Suite 400
Columbus, Ohio 43215,

JOHN DOES NOS. 1-3
Addresses Unknown,

Defendants.

Now comes Plaintiff Norfolk Southern Railway Company (“Norfolk Southern”), by and through counsel, for its Complaint against Defendants Brandt Road Rail Corporation, Brandt Road Rail Inc. and John Does Nos. 1-3 (Collectively “Defendants” and/or “Brandt”), and avers and alleges as follows:

PARTIES

1. Plaintiff Norfolk Southern Railway Company is a Virginia corporation with a principal place of business located at 650 W. Peachtree St. NW, Atlanta, Fulton County, GA 30308.

2. Defendant Brandt Rail Corporation is a Canadian corporation with its principal place of business located at 302 Mill Street, Regina, Saskatchewan S4P3E1, Canada.

3. Defendant Brandt Road Rail Inc. is a Delaware Corporation with a principal place of business located in Delaware.

4. John Does Nos. 1-3 may be affiliated corporate entities of Brandt and/or other entities, whose corporate names and addresses are presently unknown, and which may be responsible for the design and/or manufacture of the truck at issue in this case.

JURISDICTION AND VENUE

5. This Court has original jurisdiction, pursuant to 28 U.S.C. § 1332(a)(2), as the matter in controversy exceeds the sum of \$75,000 and Plaintiff is a citizen of the State of Virginia and Defendants are citizens of Canada and/or the State of Delaware.

6. Venue is proper under 28 U.S.C. § 1391(b)(2) as Pike County, Ohio is the location where a substantial part of the events giving rise to the claims occurred.

GENERAL ALLEGATIONS

7. On or before March 13, 2014, Defendants sold and delivered to Norfolk Southern a Brandt R4 Power Unit Tie Crane Model truck (“Brandt Truck”).

8. On or about May 22, 2023, Randy Borders filed a lawsuit against Norfolk Southern in the Court of Common Pleas of Franklin County, Ohio Case No. 23-CV-003618 (“Borders Lawsuit”), alleging injuries sustained while working on the above referenced Brandt Truck which Norfolk Southern purchased from Brandt. **Ex. A, Borders Complaint.**

9. Norfolk Southern filed a timely answer denying the allegations of Mr. Borders’ Complaint and asserting various affirmative defenses.

10. Mr. Borders alleges personal injuries arising from an accident that occurred while he was working on the Brandt Truck at Norfolk Southern's Waverly House Track located in Pike County, Ohio. Specifically, Mr. Borders alleges that when he stepped down on a sander access door, located in the bed of the truck, the door suddenly and unexpectedly gave way trapping his foot in the sander door compartment resulting in permanent injuries to his ankle and back.

11. Borders alleges that the accident left him permanently unable to work in any capacity.

12. Mr. Borders retained an engineering expert, Greg DuBois, P.E., CTL Engineering, who issued a report dated December 13, 2023, in which he opined that the dimensions of the sander access door and its support lip were undersized. **Ex. B., CTL Engineering Report**

13. Mr. DuBois also identified several other door covers on the truck, covering other smaller openings on the truck deck, having a support lip on three sides of the opening, not just one side (opposite the hinges), as was the case on the sander door cover in question.

14. Mr. DuBois' Report alleges various defects in Brandt's design and/or manufacture of the sander door and sander door compartment.

15. On January 11, 2024, Norfolk Southern put Brandt on notice of Mr. Borders' claims. **Ex. C – Claim Notice Letter.**

CLAIM ONE – COMMON LAW INDEMNITY

16. The facts alleged above in paragraphs 1 through 15 are incorporated by reference as if specifically restated herein.

17. Mr. Borders' Complaint alleges negligence on the part of Norfolk Southern arising from the design and/or manufacture of the Brandt Truck's sander door and sander door compartment.

18. The alleged negligence of Norfolk Southern, if any, which has been denied, is passive and secondary compared to the active and primary negligence of Brandt which designed and manufactured the subject truck, and Brandt's negligence is or may be the proximate cause of Mr. Borders' alleged accident and injuries.

19. In the event that Norfolk Southern is found to have any liability to Mr. Borders, which liability is denied, then Norfolk Southern is entitled to indemnity from Defendants.

CLAIM TWO – CONTRIBUTION

20. The facts alleged above in paragraphs 1 through 19 are incorporated by reference as if specifically restated herein.

21. Defendants are solely responsible for the design and manufacture of the Brandt Truck which Mr. Borders alleges caused his injuries.

22. If Norfolk Southern is found liable in the Borders lawsuit, then Norfolk Southern is entitled to contribution from Defendants pursuant to Ohio Revised Code § 2307.22, *et seq.*

WHEREFORE, Plaintiff Norfolk Southern Railway Company requests judgment against Defendants in an amount in excess of \$75,000, plus costs, expenses and reasonable attorney's fees incurred herein.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

/s/ R. Leland Evans

R. Leland Evans (0006833)(Trial Attorney)

Scott A. Fenton (0068097)

10 W. Broad Street, Suite 1950

Columbus, Ohio 43215

PH: (614) 258-6000; FAX: (888) 811-7144

revans@dmclaw.com

sfenton@dmclaw.com

Counsel for Plaintiff, Norfolk Southern Railway Company

JURY DEMAND

Plaintiff demands a trial by jury as to all causes of action.

/s/ R. Leland Evans

R. Leland Evans (0006833)(Trial Attorney)
DICKIE, MCCAMEY & CHILCOTE, P.C.